

AMENDED IN ASSEMBLY APRIL 20, 2006

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

ASSEMBLY BILL

No. 1919

Introduced by Assembly Member Aghazarian

January 31, 2006

~~An act to amend Section 585 of the Code of Civil Procedure, and to amend Section 68608 of the Government Code, relating to civil actions: relating to the Judicial Council.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 1919, as amended, Aghazarian. ~~Civil actions: simple Judicial Council:~~ collection actions.

Existing law requires the Judicial Council to undertake studies and adopt rules relating to the administration of the trial courts.

This bill would require the Judicial Council to create a working group to explore the practice, procedure, and administration of collection cases in the trial courts.

~~(1) Existing law requires the court to enter default and judgment against the defendant in an action arising upon contract or judgment for the recovery of money or damages if the defendant fails to answer the complaint, as specified.~~

~~This bill would require the clerk of the court to enter default and judgment against the defendant in a simple collection action upon the filing of a verified complaint by the plaintiff indicating all amounts due by the defendant.~~

~~(2) Existing law, the Trial Court Delay Reduction Act, requires each superior court to establish a delay reduction program for limited civil cases, with specified exceptions.~~

~~This bill would prohibit the assignment of limited jurisdiction matters constituting simple collection actions to a delay reduction program. The bill would require the court to assign a trial date, as specified, and would prohibit the scheduling of case management or other status conferences, and hearings relating to service of process, unless specifically requested by a party. The bill would require the Judicial Council to define “simple collection actions” by rule of court.~~

~~(3) The bill would make other technical, nonsubstantive changes to these provisions:~~

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 ~~SECTION 1. The Judicial Council shall create a working~~
2 ~~group to explore the practice, procedure, and administration of~~
3 ~~collection cases in the trial courts.~~

4 ~~SECTION 1. Section 585 of the Code of Civil Procedure is~~
5 ~~amended to read:~~

6 ~~585. Judgment may be had, if the defendant fails to answer~~
7 ~~the complaint, as follows:~~

8 ~~(a) In an action arising upon contract or judgment for the~~
9 ~~recovery of money or damages only, if the defendant has, or if~~
10 ~~more than one defendant, if any of the defendants have, been~~
11 ~~served, other than by publication, and no answer, demurrer,~~
12 ~~notice of motion to strike as described in subdivision (f), notice~~
13 ~~of motion to transfer pursuant to Section 396b, notice of motion~~
14 ~~to dismiss pursuant to Article 2 (commencing with Section~~
15 ~~583.210) of Chapter 1.5, notice of motion to quash service of~~
16 ~~summons or to stay or dismiss the action pursuant to Section~~
17 ~~418.10, or notice of the filing of a petition for writ of mandate as~~
18 ~~provided in Section 418.10, has been filed with the clerk or judge~~
19 ~~of the court within the time specified in the summons, or any~~
20 ~~further time as may be allowed, the clerk, or the judge if there is~~
21 ~~no clerk, upon written application of the plaintiff, and proof of~~
22 ~~the service of summons, shall enter the default of the defendant~~
23 ~~or defendants so served, and immediately thereafter enter~~
24 ~~judgment for the principal amount demanded in the complaint, in~~
25 ~~the statement required by Section 425.11, or in the statement~~
26 ~~provided for in Section 425.115, or a lesser amount if credit has~~

1 been acknowledged, together with interest allowed by law or in
2 accordance with the terms of the contract, and the costs against
3 the defendant or defendants, or against one or more of the
4 defendants. For simple collection actions subject to subdivision
5 (b) of Section 68608 of the Government Code, the clerk shall
6 enter the default and judgment upon the filing of a verified
7 complaint by the plaintiff indicating all amounts due by the
8 defendant. If, by rule of court, a schedule of attorney's fees has
9 been adopted, the clerk may include in the judgment attorney's
10 fees in accordance with the schedule if (1) the contract provides
11 that attorney's fees shall be allowed in the event of an action
12 thereon, or (2) the plaintiff is entitled by statute to recover
13 attorney's fees in addition to money or damages. The plaintiff
14 shall file a written request at the time of application for entry of
15 the default of the defendant or defendants, to have attorney's fees
16 fixed by the court, whereupon, after the entry of the default, the
17 court shall hear the application for determination of the
18 attorney's fees and shall render judgment for those fees and for
19 the other relief demanded in the complaint, in the statement
20 required by Section 425.11, or in the statement provided for in
21 Section 425.115, or a lesser amount if credit has been
22 acknowledged, and the costs against the defendant or defendants,
23 or against one or more of the defendants.

24 (b) In other actions, if the defendant has been served, other
25 than by publication, and no answer, demurrer, notice of motion to
26 strike as described in subdivision (f), notice of motion to transfer
27 pursuant to Section 396b, notice of motion to dismiss pursuant to
28 Article 2 (commencing with Section 583.210) of Chapter 1.5,
29 notice of motion to quash service of summons or to stay or
30 dismiss the action pursuant to Section 418.10 or notice of the
31 filing of a petition for writ of mandate as provided in Section
32 418.10, has been filed with the clerk or judge of the court within
33 the time specified in the summons, or any further time as may be
34 allowed, the clerk, or the judge if there is no clerk, upon written
35 application of the plaintiff, shall enter the default of the
36 defendant. The plaintiff thereafter may apply to the court for the
37 relief demanded in the complaint. The court shall hear the
38 evidence offered by the plaintiff, and shall render judgment in his
39 or her favor for that sum, not exceeding the amount stated in the
40 complaint, in the statement required by Section 425.11, or in the

1 statement provided for by Section 425.115, as appears by the
2 evidence to be just. If the taking of an account or the proof of any
3 fact is necessary to enable the court to give judgment or to carry
4 the judgment into effect, the court may take the account or hear
5 the proof, or may, in its discretion, order a reference for that
6 purpose. If the action is for the recovery of damages, in whole or
7 in part, the court may order the damages to be assessed by a jury;
8 or if, to determine the amount of damages, the examination of a
9 long account is involved by a reference as above provided.

10 (e) In all actions in which the service of the summons was by
11 publication, upon the expiration of the time for answering, and
12 upon proof of the publication and that no answer, demurrer,
13 notice of motion to strike as described in subdivision (f), notice
14 of motion to transfer pursuant to Section 396b, notice of motion
15 to dismiss pursuant to Article 2 (commencing with Section
16 583.210) of Chapter 1.5, notice of motion to quash service of
17 summons or to stay or dismiss the action pursuant to Section
18 418.10, or notice of the filing of a petition for writ of mandate as
19 provided in Section 418.10, has been filed, the clerk, or the judge
20 if there is no clerk, upon written application of the plaintiff, shall
21 enter the default of the defendant. The plaintiff thereafter may
22 apply to the court for the relief demanded in the complaint. The
23 court shall hear the evidence offered by the plaintiff, and shall
24 render judgment in his or her favor for that sum, not exceeding
25 the amount stated in the complaint, in the statement required by
26 Section 425.11, or in the statement provided for in
27 Section 425.115, as appears by the evidence to be just. If the
28 defendant is not a resident of the state, the court shall require the
29 plaintiff, or his or her agent, to be examined on oath regarding
30 any payments that have been made to the plaintiff, or to anyone
31 for his or her use, on account of any demand mentioned in the
32 complaint, in the statement required by Section 425.11, or in the
33 statement provided for in Section 425.115, and may render
34 judgment for the amount that he or she is entitled to recover. In
35 all cases affecting the title to or possession of real property in
36 which the service of the summons was by publication and the
37 defendant has failed to answer, no judgment shall be rendered
38 upon proof of mere occupancy, unless the occupancy continued
39 for the time and was of the character necessary to confer title by
40 prescription. In all cases in which the plaintiff bases his or her

1 ~~claim upon a paper title, the court shall require evidence~~
2 ~~establishing plaintiff's equitable right to judgment before~~
3 ~~rendering judgment. In actions involving only the possession of~~
4 ~~real property in which the complaint is verified and shows by~~
5 ~~proper allegations that no party to the action claims title to the~~
6 ~~real property involved, either by prescription, acccession, transfer,~~
7 ~~will, or succession, but only the possession thereof, the court may~~
8 ~~render judgment upon proof of occupancy by plaintiff and ouster~~
9 ~~by defendant.~~

10 ~~(d) In the cases referred to in subdivisions (b) and (c), or upon~~
11 ~~an application to have attorney's fees fixed by the court pursuant~~
12 ~~to subdivision (a), the court in its discretion may permit the use~~
13 ~~of affidavits, in lieu of personal testimony, as to all or any part of~~
14 ~~the evidence or proof required or permitted to be offered,~~
15 ~~received, or heard in those cases. The facts stated in the affidavits~~
16 ~~shall be within the personal knowledge of the affiant and shall be~~
17 ~~set forth with particularity, and each affidavit shall show~~
18 ~~affirmatively that the affiant, if sworn as a witness, can testify~~
19 ~~competently thereto.~~

20 ~~(e) If a defendant files a cross-complaint against another~~
21 ~~defendant or the plaintiff, a default may be entered against that~~
22 ~~party on that cross-complaint if the plaintiff or cross-defendant~~
23 ~~has been served with the cross-complaint and he or she has failed~~
24 ~~to file an answer, demurrer, notice of motion to strike as~~
25 ~~described in subdivision (f), notice of motion to transfer pursuant~~
26 ~~to Section 396b, notice of motion to dismiss pursuant to Article 2~~
27 ~~(commencing with Section 583.210) of Chapter 1.5, notice of~~
28 ~~motion to quash service of summons or to stay or dismiss the~~
29 ~~action pursuant to Section 418.10, or notice of the filing of a~~
30 ~~petition for a writ of mandate as provided in Section 418.10,~~
31 ~~within the time specified in the summons, or any other time as~~
32 ~~may be allowed. However, no judgment may separately be~~
33 ~~entered on the cross-complaint unless a separate judgment may,~~
34 ~~in fact, be properly awarded on the cross-complaint, and the~~
35 ~~court finds that a separate judgment on the cross-complaint~~
36 ~~would not substantially delay the final disposition of the action~~
37 ~~between the parties.~~

38 ~~(f) A notice of motion to strike within the meaning of this~~
39 ~~section is a notice of motion to strike the whole or any part of a~~
40 ~~pleading filed within the time that the moving party is required~~

1 otherwise to plead to that pleading. The notice of motion to strike
2 shall specify a hearing date set in accordance with Section 1005.
3 The filing of a notice of motion does not extend the time within
4 which to demur.

5 SEC. 2. Section 68608 of the Government Code is amended
6 to read:

7 68608. (a) (1) Juvenile, probate, and domestic relations
8 cases shall not be assigned to a delay reduction program, and
9 cases that have been assigned to a judge or judges for all
10 purposes based on subject matter need not be assigned to the
11 program.

12 (2) Limited jurisdiction matters constituting simple collection
13 actions, as shall be defined by the Judicial Council by rule of
14 court, shall not be assigned to a delay reduction program. The
15 court shall assign a trial date upon filing of these actions not less
16 than nine months nor greater than 12 months after the filing date.
17 Thereafter, the court shall not schedule case management or
18 other status conferences, nor hearings relating to service of
19 process, unless specifically requested by a party.

20 (b) Judges shall have all the powers to impose sanctions
21 authorized by law, including the power to dismiss actions or
22 strike pleadings, if it appears that less severe sanctions would not
23 be effective after taking into account the effect of previous
24 sanctions or previous lack of compliance in the case. Judges are
25 encouraged to impose sanctions to achieve the purposes of this
26 article.

27 (c) This section shall become operative July 1, 1992.